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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

MADELEINE HEFFEL,

Plaintiff and Respondent,

v.

WILLIAM LYON HOMES, INC.,

Defendant and Appellant.

A106733

(Alameda County
Super. Ct. No. CH207619-5)

I. INTRODUCTION

William Lyon Homes, Inc. (WLHI) appeals from a jury verdict against it on Madeleine Heffel's claims relating to construction of her new house, and appeals from the denial of a related motion for judgment notwithstanding the verdict (JNOV). Heffel moves to dismiss the appeal on the grounds that (1) WLHI's notice of appeal from the judgment was untimely; and (2) although WLHI's notice of appeal from the denial of its JNOV motion was timely, the JNOV motion itself was untimely and, therefore, void. We will dismiss the appeal.

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 9, 2004,¹ the jury returned a special verdict for Heffel. The court entered judgment on March 18. On March 22, cross-defendant Allsafe Alarm served

¹ Unless otherwise indicated, all dates refer to the year 2004.

notice of entry of the judgment. On April 8, WLHI filed its notice of intention to move for a new trial and a motion for JNOV. On April 16, WLHI filed its motion for a new trial. Heffel opposed the new trial motion, including arguing that it was untimely.²

The trial court heard and denied the new trial and JNOV motions on April 30. As to the new trial motion, the court expressly declined to rule on Heffel's timeliness objection: "The motion is denied. However, it is not denied on the grounds that it was untimely. I want to make sure that is clear for the record. That is a point brought up by the plaintiff."

On May 27, WLHI filed its notice of appeal.

III. DISCUSSION

The normal time for filing a notice of appeal is 60 days after the mailing of a notice of entry of judgment. (Cal. Rules of Court, rule 2(a).) A motion for a new trial or for JNOV will extend the time until 30 days after either entry of the order denying the motion or denial thereof by operation of law, but only when a *valid* notice of intention to move for a new trial or a *valid* motion for JNOV is served and filed. (Cal. Rules of Court, rule 3(a), (c).) Both a notice of intention and a motion for JNOV filed after the allowed time are invalid and do not extend the time for filing a notice of appeal from the judgment beyond the normal 60 days. (*Younesi v. Lane* (1991) 228 Cal.App.3d 967, 971-972 [concluding that the trial court lacked jurisdiction to hear Younesi's JNOV motion because it was not timely filed], disapproved on another point in *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 63; *In re Marriage of Patscheck* (1986) 180 Cal.App.3d 800, 802 ["A notice of intention [to move for a new trial] filed after the allowed time is invalid and does not extend the time for filing a notice of appeal from the judgment beyond the normal 60 days"]; *Ehrler*

² From the papers, it is unclear whether Heffel made a timeliness objection to the JNOV motion.

v. Ehrler (1981) 126 Cal.App.3d 147, 151 [“Timely filing is essential to the jurisdiction of the court to entertain a motion for a new trial.”].)

In this case, notice of entry of the judgment was served on March 22. WLHI had 15 days from that date, or until April 6, a Tuesday,³ to file its notice of intention and its motion for JNOV. WLHI filed its notice of intention and its motion for JNOV on April 8, two days late. Thus, the notice and motion were invalid, and did not operate to extend the time for filing an appeal.

WLHI argues that, in calculating the time for filing its appeal, it was entitled to rely on the trial court’s rejection of Heffel’s argument that the motions were untimely. According to WLHI, the trial court exercised its inherent power to accept the motions as valid and to rule on the merits. WLHI then used the date of the court’s ruling on its new trial and JNOV motions to determine the date for its appeal and filed the appeal within the 30-day extension allowed under Rule 3 of the California Rules of Court. (Cal. Rules of Court, rule 3(a)(1), (c)(1)(A).)

WLHI relies on *Slawinski v. Mocettini* (1965) 63 Cal.2d 70 (*Slawinski*) and *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660 (*Hollister*), for the proposition that courts have discretion under appropriate circumstances to deem as timely motions for new trial filed outside the statutory guidelines. WLHI argues that such discretion must be exercised here. We disagree.

As expressly limited by the Supreme Court in *Hollister*, *Slawinski* held simply that when there is “a clear conflict between the permanent minutes of the court and a formal order issued by it relative to the date of entry of an order denying a motion for new trial, that conflict is to be resolved in favor of granting the right of appeal.” (*Hollister, supra*, 15 Cal.3d at p. 665.) In arguing that *Slawinski, supra*, 63 Cal.2d 70 is applicable, WLHI

³ In support of its motion to dismiss, Heffel requests that this court take judicial notice of certain dates in the 2004 calendar. The requests are granted. (Evid. Code, §§ 452, subd. (h), & 459, subd. (a)(2).)

urges that the conflicting dates presented by this case are the date of entry of the judgment on March 22, 2004, and the date of denial of the motion for a new trial on April 30, 2004. On its face, this is a distinctly different situation from that in *Slawinski*, where the conflicting dates in question related to the same event—the date of entry of the order denying the motion for a new trial.

In addition, *Hollister* disapproved the “unnecessary and overbroad dicta in *Slawinski*” that had led to confusion in the lower courts regarding situations in which untimely appeals should be deemed timely. (15 Cal.3d at p. 674.) *Hollister* stated its intent to “restore [] to its former clarity” (*ibid.*) the message of *Estate of Hanley* (1943) 23 Cal.2d 120: “In examining the appellant’s position, it is immaterial whether the misrepresentations concerning the date upon which the order was filed were wilful or inadvertent, whether the reliance thereon was reasonable or unreasonable, or whether the parties seeking to dismiss are acting in good faith or not. It may be assumed that the appellant has presented grounds for relief which would be sufficient if relief could be granted. But the requirement as to the time for taking an appeal is mandatory, and the court is without jurisdiction to consider one which has been taken subsequent to the expiration of the statutory period. [¶] [] In the absence of statutory authorization, neither the trial nor appellate courts may extend or shorten the time for appeal, even to relieve against mistake, inadvertence, accident, or misfortune. Nor can jurisdiction be conferred upon the appellate court by the consent or stipulation of the parties, estoppel, or waiver. If it appears that the appeal was not taken within the 60-day period, the court has no discretion but must dismiss the appeal of its own motion even if no objection is made.” (*Id.*, at pp. 122-123, internal citations omitted.)

Finally, WLHI contends that this is a “doubtful case” under *Slawinski*, in which the policy favoring the right of appeal, “implemented in accordance with ‘applicable rules,’ will lead to a determination, based on construction and interpretation, that timely and proper notice of appeal must be deemed in law to have been filed within the

jurisdictional period.” (*Hollister, supra*, 15 Cal.3d at p. 674.) However, we find nothing in *Hollister* to support such an outcome in this case. The law is well established, as described above, that the time for filing a motion for a new trial or for JNOV is jurisdictional. The trial court could not vest itself with jurisdiction where in fact it had none.

WLHI separately appealed from the denial of its motion for JNOV on April 30. The notice of appeal, filed on May 27, was timely as to that order. (Code Civ. Proc., § 904.1, subd. (a)(4) [denial of motion for JNOV is independently appealable].) However, because the motion itself was untimely and the trial court had no jurisdiction to consider that motion, there is “nothing for us to review.” (See *Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 153 [untimely new trial motion was void and of no effect].)

IV. DISPOSITION

WLHI’s appeal from the judgment, filed 66 days after notice of entry of judgment, is untimely and must be dismissed. Its appeal from the order denying its motion for JNOV was timely, but because the motion itself was not, and the trial court lacked jurisdiction to consider it, the appeal from the denial of the motion for JNOV must also be dismissed.

Haerle, Acting P.J.

We concur:

Lambden, J.

Ruvolo, J.